

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 27**

BRAGG'S ELECTRIC CONSTRUCTION CO.,

Employer,

Case 27-RC-8425

and

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 68

Petitioner,

**DECISION AND DIRECTION OF ELECTION**

On January 12, 2006<sup>1</sup>, the Petitioner, International Brotherhood of Electrical Workers, Local 68, filed a petition under Section 9(c) of the National Labor Relations Act seeking to represent journeymen and apprentice electricians licensed in Colorado who have been hired by Bragg's Electric Construction Co. (the Employer), to work on the construction of two new Dillard's department stores in Aurora and Littleton, Colorado. On January 26 a hearing was held before Hearing Officer Krista L. Zimmerman. Following the close of the hearing, the parties filed timely briefs.

The first issue to be determined is whether, given the time remaining for the Employer to perform work on the Aurora and Littleton projects, it is appropriate to direct an election in this proceeding. The Employer contends that the Petition should be dismissed because it will not effectuate the purposes of the Act to proceed to an election due to the imminent reduction of the Employer's workforce on its only two construction projects within the geographic unit proposed by the Petitioner. The

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<sup>1</sup> All dates are 2006 unless otherwise noted.

Employer does not have any other work under bid in Colorado, or any expectation of future work in the state. The Petitioner argues that an election is appropriate because at least some employees in the unit will continue performing work on the Aurora and Littleton projects for approximately six to eight months.

The second issue is the composition of the appropriate unit. If the undersigned finds that it is appropriate to order an election in this case, the Petitioner seeks only to represent approximately 13 employees who were hired locally by the Employer to work at the two Dillard's construction sites.<sup>2</sup> While the Petitioner and Employer agree that any unit found appropriate should include electrical employees at both the Aurora and Littleton projects, they differ with respect to which electrical employees constitute an appropriate unit. The Employer contends that the only appropriate bargaining unit must include the locally hired electrical employees who are working at the Littleton and Aurora projects as well as the approximately 22 permanent electrical employees who have been transferred to work on the Aurora and Littleton projects and who work side-by-side with the locally hired electrical employees, share common supervision, perform the same duties and responsibilities, and enjoy similar wages and benefits. Conversely, the Petitioner contends that the locally hired electrical employees do not share a community of interest with the Employer's permanent traveling employees and that these local employees constitute a separate appropriate collective bargaining unit by themselves. There is no history of collective bargaining for any of the employees at issue herein.

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<sup>2</sup> The unit described in the Petition is:

Included: All Colorado State licensed electricians and registered Colorado apprentices employed by Bragg's Electric Construction Co., working in the State of Colorado.

Excluded: All clerical, confidential and office staff, and supervisors as defined by the Act.

For the reasons enunciated below, I find that the completion of work is sufficiently imminent to warrant dismissal of this Petition. See *Davey McKee Corp.*, 308 NLRB 839 (1992) and the cases cited below. Since I am dismissing this petition, I find that it is unnecessary to decide the second issue, the composition of the bargaining unit.

Under Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it is subject to the jurisdiction of the Board. Specifically, I find that the Employer, Bragg's Electric Construction Co., a division of CDL, LLC, an Arkansas corporation, is engaged in the construction industry as an electrical installation contractor on construction projects in Aurora and Littleton, Colorado. During the course and conduct of those construction projects, the Employer, during the past calendar year, has purchased and received at its Colorado projects, goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Colorado.
3. The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. Based upon the record no question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the reasons set forth below.

## STATEMENT OF THE CASE

### A. Background

Bragg's Electric Construction Co., is a division of CDI, LLC. CDI is a general contractor performing commercial construction work in various states on malls, including Dillard's Department Stores, hospitals, churches, and other commercial projects such as the Clinton Presidential Library. Bragg's was formed in about 1987 and almost exclusively performs electrical work on construction projects for Dillard's Department Stores.<sup>3</sup> CDI and Bragg's are both headquartered in Little Rock, Arkansas. CDI and Bragg's initially started working on Dillard's projects in about 5 states and now perform work in the 39 states where Dillard's has stores.

Prior to the Littleton and Aurora projects that are the subject of this proceeding, the Employer has worked on one other project in Colorado. That project involved new construction of the Dillard's store in Boulder, Colorado, which was completed in 1999. The Employer does not have any other work under bid in Colorado, nor does it anticipate the construction of any other Dillard's stores in Colorado.

Bragg's currently has about 144 electrical field employees working throughout the country, of which about 70% are considered "permanent or travelers"<sup>4</sup> and 30% are considered "temporary local hires." These 144 employees are currently working on four large projects, including the two Colorado projects at issue. The two Colorado projects include approximately 22 permanent employees and the 13 petitioned-for locally hired employees working on the Aurora Mall

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<sup>3</sup> Vice President Larry Levick testified that Bragg's may occasionally be asked to work on other CDI projects, but it is rare.

<sup>4</sup> The parties used the terms "permanent" and "traveler" interchangeably throughout this proceeding.

Dillard's store in Aurora, Colorado, and the Dillard's store at Southwest Plaza in Littleton, Colorado.<sup>5</sup>

The Aurora project is overseen by superintendent Kevin Gosney. The Littleton project is overseen by superintendent Mike Quinn.<sup>6</sup> These two superintendents report to Vice President Levick. Reporting to these two superintendents are three foremen; Mike Gilbert, Lynn Hoerschler, and Dewey Beard. These three foremen are all permanent employees. Gilbert and Hoerschler are currently working at the Aurora project, and Beard is currently at the Littleton project.

## **B. The Colorado projects**

The Employer's work at the Aurora and Littleton Dillard's stores involves about eight months of electrical construction. Both projects actually commenced in 2005, but construction was halted because of a contemplated cancellation of the projects. Specifically, work on the Littleton project commenced in July 2005, shut down about a month later and did not resume until about November 2005. Similarly, the work on the Aurora project commenced in August 2005, was shut down for a short period and then resumed about one month later. Both of these projects involve new construction of 200,000 square foot stores. Construction on the Aurora store is expected to be completed in early July. At that time, the store will be turned over to Dillard's employees for stocking. Dillard's has scheduled the grand opening of that store for one month after construction is complete. The construction is scheduled to be completed on the

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<sup>5</sup> As noted, the parties do not contend the unit should include any employees working outside the state of Colorado.

<sup>6</sup> The parties stipulated that Quinn and Gosney possess and exercise statutory supervisory indicia. This stipulation is supported by the record evidence, particularly the evidence that they were directly responsible for hiring the locally hired employees, and, accordingly, I find that they are supervisors within the meaning of Section 2(11) of the Act.

Littleton store in early September, with its grand opening scheduled for one month later. Employer Vice President Levick testified that the store opening dates are not subject to change and that if the Employer suffers a set back in its work schedule, it is obligated to hire as many employees as needed to get back on schedule.

The Employer currently has 12 locally hired electrical workers and 12 permanent employees performing electrical work at the Aurora project. The uncontroverted testimony of Vice President Levick establishes that the electrical work being performed by Bragg's must be substantially complete on the Aurora store approximately six to eight weeks prior to the scheduled early July completion because the fire marshals, elevator inspectors, and other safety inspectors will be performing inspections at that time in anticipation of the completion of the project. Thus, the evidence establishes that by early to mid-May the Employer will have gradually reduced its workforce at the Aurora project to two employees who will be performing "punch list" work up until the time the store is turned over to Dillard's for occupancy. The reduction in work force at the Aurora project will entail transferring some employees to the Littleton project, transferring permanent employees to Bragg's projects in other states and permanently laying off some of the locally hired employees. The selection of local hires for lay off versus transfer to the Littleton job site will be based on the requirements of Colorado law relating to the specified ratio of journeymen to apprentices. In this regard, while many of the permanent employees are actually long-term journeymen, under Colorado rules they are classified as apprentices. To satisfy state of Colorado requirements, the majority of locally hired employees are journeymen. As a result, the Employer may

actually retain the locally hired employees longer than it might have in states without such classification requirements.

With regard to the Littleton store, the Employer currently has 1 locally hired electrical worker and 10 permanent employees performing electrical work on the Littleton project. The uncontroverted testimony of Vice President Levick establishes that when the Aurora project winds down, the Employer will transfer some employees from Aurora to Littleton so that approximately 20-24 of the Employer's employees will be performing electrical work on the Littleton project. Like the Aurora job, that number will then be gradually reduced by early or mid-July so that only two employees will remain working on that job to perform "punch list" work.

### **C. Community of Interest**

While the record does not provide great detail regarding community of interest factors, both Vice President Levick and Petitioner witness employee Troy Kirkbaum testified that the locally hired and permanent employees have daily work contact because they work side-by-side, performing electrical construction work. The uncontroverted testimony also establishes that both locally hired and permanent employees work under the supervision of the two respective job superintendents on the Aurora and Littleton projects. There is also evidence of interchange between the electrical workers at the two job sites as needed based on the demands of the two projects.

With regard to wages and benefits, the record establishes that the locally hired employees are paid between \$20.00 and \$23.00 per hour. The permanent employees have a slightly lower hourly wage range of \$18.50 to \$21.50 per hour. Both permanent and locally hired employees are eligible for health insurance after they

work for 60 days. The permanent employees also are paid for drive time and gasoline purchases when they travel from one out-of-state project to another, and receive between \$700 to \$900 subsistence pay per month. The locally hired employees, who do not travel from state to state, do not receive any subsistence pay. Neither the permanent nor the locally hired employees receive travel compensation for drive time or mileage while commuting to work on the Aurora or Littleton projects, or when traveling between the two projects.

## **CONCLUSIONS AND FINDINGS**

### **A. Imminent cessation issue**

I will first consider the issue of whether the Petition should be dismissed, as urged by the Employer, because cessation of electrical work at the Aurora and Littleton projects is imminent. There have been numerous Board decisions establishing that where an employer's operations are scheduled for imminent completion, no useful purpose would be served by directing an election. See *Davey McKee Corp.*, 308 NLRB 839 (1992), and the cases cited therein. For instance, in *M. B. Kahn*, 210 NLRB 1050 (1974), the Board refused to direct an election where approximately three to five months of work remained at the time the regional director issued a decision. In *Martin Marietta Aluminum, Inc.*, 214 NLRB 646 (1974), the Board dismissed a petition where the plant was scheduled to be closed approximately three and one-half months after the Direction of Election. Also, in *Plum Creek Lumber Co.*, 214 NLRB 619 (1974), the Board determined that it would not effectuate the policies of the Act to hold an election in a unit scheduled to undergo "imminent substantial contraction" about four months from the

Direction of Election. See also, *Hughes Aircraft Co.*, 308 NLRB 82 (1992); *Larsen Plywood Co.*, 223 NLRB 1161 (1976); *Armour & Co.*, 62 NLRB 1194 (1945).

Vice President Levick testified that the Aurora project is scheduled to be turned over to Dillard's in early July, and that electrical work at the Aurora project will be substantially completed in early to mid-May. Moreover, as the Aurora project winds down at least some electrical workers will be transferred from the Aurora project to the Littleton project. The Littleton project is scheduled to be turned over to Dillard's in September and the electrical work on that project will be substantially completed in early to mid-July. The Employer does not have any other jobs scheduled to begin in the state of Colorado. That testimony by Vice President Levick is uncontradicted. Since the electrical work on the Employer's Colorado projects will substantially end in early or mid-July and the Employer has no other Colorado jobs scheduled to begin, I find that the Employer's Aurora and Littleton Colorado projects are scheduled for imminent completion. When these projects are completed, the Employer will have no further projects in the state of Colorado involving employees performing electrical work as encompassed by the petition. Since the Employer has no other Colorado projects under bid, and there are no prospects for any similar bids in the near future, the current employees have no reasonable expectation of continuing their employment or being rehired on a future project. In accordance with the foregoing discussion, it does not appear that the Employer will employ employees performing electrical work as encompassed by the petition for a sufficient period of time to warrant directing an election in his matter. Similarly, the record evidence does not establish any reasonable likelihood that the Employer will employ these employees in Colorado at any time in the

future. Therefore, consistent with the Board cases discussed above, I find that it would not effectuate the policies of the Act to conduct an election in this case.<sup>7</sup> However, should the Employer's work on either of the two Dillard's stores at issue continue for a substantially longer period of time than is now anticipated, or should the Employer acquire additional construction projects in the state of Colorado utilizing employees contemplated by the petition, I will entertain a motion by the Petitioner to reinstate this petition.

### **ORDER**

Since I have found that the Employer's electrical work at the Aurora and Littleton Colorado Dillard's stores is nearing completion and the employees who are performing electrical work on those projects have no expectation of continued employment in Colorado beyond the next few months, it would serve no useful purpose to direct an election in this matter. I shall therefore dismiss the petition.<sup>8</sup>

Dated at Denver, Colorado, this 23<sup>rd</sup> day of February, 2006

B/ Allan Benson, Regional Director  
B. Allan Benson, Regional Director  
National Labor Relations Board  
Region 27  
700 North Tower, Dominion Plaza  
600 Seventeenth Street  
Denver, Colorado 80202-5433

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<sup>7</sup> I find the mere fact that two employees may be performing "punch list" work for an additional 6 to 8 weeks after completion of the construction work does not require a different result.

<sup>8</sup> Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by March 9, 2006.

